BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION OF DELAWARE DIVISION OF THE PUBLIC ADVOCATE TO REDUCE THE RATES OF REGULATED UTILITIES AS A RESULT OF THE TAX CUTS AND JOBS ACT OF 2017'S REDUCTION IN CORPORATE INCOME TAXES AND OTHER TAX CHANGES(FILED DECEMBER 27, 2017)	)	PSC DOCKET NO. 17-1240

ORDER NO. 9334

AND NOW, this 31st day of January, 2019:

1. On December 22, 2017, the President signed the Tax Cuts and Jobs Act of 2017 ("TCJA"), which became effective on January 1, 2018. The TCJA represents the first significant change in the United States federal tax laws since the 1986 Tax reform Act. Among other things, the TCJA: (1) reduces the federal corporate income tax rate from 35% to 21%; (2) allows full and immediate expensing of short-lived capital investments for five years; and (3) increases the expensing cap from $500,000 to $1 million.

2. The Delaware Public Service Commission ("Commission") has long included in a regulated utility's operating expenses an amount of federal corporate income tax equal to what the utility would pay if it were a stand-alone company. For many years, the Commission has included in regulated utilities' operating expenses an amount of federal corporate income tax equal to 35%, and has deducted from those utilities' rate base a corresponding amount of Accumulated Deferred Income Tax ("ADIT") pursuant to 26 *Del. C.* §102(3).

3. On December 27, 2017, the Delaware Division of the Public Advocate ("DPA") filed a petition with the Commission requesting the

Commission to open a docket to examine whether the current rates of its regulated utilities required reduction as a result of the TCJA. The DPA contended that unless the Commission reduces rates in an amount that corresponds to the benefits that the TCJA confers on the utilities, Delaware regulated utility ratepayers will be paying unjust and unreasonable rates. The DPA requested the Commission to direct each regulated utility to file an estimate of its determination of the TCJA's effects on its cost of service, and to propose a procedure for changing rates to reflect those impacts, on or before March 31, 2018. Additionally, should the Commission determine that any utility's rates require reduction as a result of its review of the utility's submission, the DPA asked the Commission to open a docket for each utility for which it made such a determination, and to establish a procedural schedule for conducting an evidentiary hearing regarding the TCJA's impacts on the utility's operations and existing rates.

4. On January 16, 2018, in Order No. 9166, the Commission granted the DPA's petition. It directed each rate-regulated public utility to file an estimate of its determination of the TCJA's effects on its cost of service for the most recent test year available (including new rate schedules) and to propose a procedure for changing rates to reflect those impacts on or before March 31, 2018. It also ordered that if it determined that a utility's rates required reduction, it would open a new docket for each utility for which it made such a determination and would establish a procedural schedule for conducting an evidentiary hearing regarding the TCJA's impacts on the utility's operations and existing rates. The Commission exempted Delmarva Power & Light Company

("DPL") from this order, instead directing that the effects of the TCJA on DPL's electric and natural gas base rates would be addressed in DPL's pending base rate cases, Docket Nos. 17-0977 and 17-0978.

5. On January 19, 2018, the DPA filed a motion to direct regulated utilities to create regulatory liabilities reflecting the Delaware jurisdictional revenue requirement impacts of the TCJA effective February 1, 2018 while the Commission determines whether a utility's rates required reduction and, if so, the amount of such reduction. The DPA contended that in order to preserve the rate-reducing effects of the TCJA until the Commission approves new rates for the utilities, a regulatory liability must be created; otherwise, the prohibition against retroactive ratemaking would deprive ratepayers of the benefits accruing from the TCJA between its effective date and the date on which Commission-authorized new rates become effective. The DPA noted that the reduction of the federal income tax rate from 35% to 21% benefits ratepayers by reducing one of the elements of a utility's cost of service that goes into calculating a utility's revenue requirement by 14%.

6. On February 1, 2018, in Order No. 9177, the Commission granted the DPA's motion and directed all Delaware rate-regulated public utilities to create regulatory liabilities reflecting the Delaware jurisdictional revenue requirement impacts of the changes in the federal corporate income tax laws, in order to protect ratepayer interests until such time as the TCJA benefits are appropriately reflected in customers' rates and to avoid retroactive ratemaking.

7. On March 27, 2018, Broadkiln Beach Water Company ("Broadkiln") and Wilkerson Water Company ("Wilkerson") submitted a filing to comply with Commission Order No. 9166. In their filing, Broadkiln and Wilkerson stated that each of the companies is an "S" corporation, and, as such, taxable income or losses are passed through to its sole shareholder. They also represented that they have used a federal tax rate of 15% since 1984. Therefore, there is nothing to be returned to their ratepayers as a result of the TCJA. Furthermore, neither company has any excess deferred income tax to be returned to ratepayers.

8. The DPA and Commission Staff have reviewed Broadkiln's and Wilkerson's submissions, and have confirmed those utilities' representations that they have used a federal tax rate of 15% since 1984 and that neither company has any excess deferred income tax; therefore, there is nothing to be returned to their ratepayers as a result of the TCJA.

9. On January 31, 2019, the Commission considered Broadkiln's and Wilkerson's submissions at its regularly-scheduled meeting.

NOW, THEREFORE, BY THE AFFIRMATIVE VOTES OF NO FEWER THAN THREE COMMISSIONERS, IT IS HEREBY FOUND AND ORDERED:

1. The Commission hereby finds that Broadkiln's and Wilkerson's revenue requirements have used a tax rate of 15% since 1984. Since 15% is less than 21%, there is nothing to be returned to these regulated utilities' ratepayers as a result of the TCJA. Furthermore, neither company has any excess deferred income tax to be returned to ratepayers. Thus, no change in the rates charged by either company is required.

2. The Commission reserves jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary